

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:18-CV-00981-CMA-MEH

Heidi Gilbert,  
Amber Means,  
Mandy Meloon,  
Gabriela Joslin,  
Kay Poe, and  
Jane Does 6-50, Plaintiffs,

v.

United States Olympic Committee,  
United States Taekwondo Association,  
Steven Lopez,  
Jean Lopez, and  
John Does 1-5,

Defendants.

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**DEFENDANTS STEVEN LOPEZ AND JEAN LOPEZ’S OBJECTIONS TO  
MAGISTRATE JUDGE’S RECOMMENDATIONS [D.E. 218] PURSUANT TO  
FED.R.CIV.P. 72(B)(2)**

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Defendant Steven Lopez hereby respectfully submits this memorandum of law in support of his objections to the March 6, 2019 Order of Magistrate Judge Hegarty, which denied in part his motion to dismiss all counts brought by Plaintiffs Heidi Gilbert, Amber Means, Mandy Meloon, Gabriela Joslin, Kay Poe, and Jane Does 6-50 (“Plaintiffs”) in Action No. 1:18-CV-00981-CMA-MEH.

Defendant Steven Lopez objects on the following bases:

1. The conclusion that the new statute of limitations under the Trafficking Victims Protection Act (“TVPA”) and 18 U.S.C. § 2255 should be applied retroactively to claims that were “unexpired” at the time of amendment is contrary to law.

2. The conclusion that Plaintiffs plausibly allege claims against Steven Lopez is contrary to law.

## **I. INTRODUCTION AND STATEMENT OF THE FACTS**

Steven Lopez is a world-class athlete in the sport of Taekwondo, and five-time Olympian who has won multiple Olympic and World Championship gold medals. Steven's brother, Jean Lopez, has coached the men's and women's Olympic Taekwondo teams at the 2004, 2008, and 2012 Olympic Games. Jean Lopez has also coached his other two siblings, Mark and Diana Lopez, who are Olympic medalists as well. Steven and Jean Lopez, and the entire Lopez family, have been highly respected for their success in Taekwondo throughout their careers. Jean Lopez started his own Taekwondo training club - Elite Taekwondo, in Sugar Land, Texas - in 1997, where elite athletes from all over the nation, including the named Plaintiffs, would come to train with them. For the Lopez family, Taekwondo is their life's work.

The allegations in the Second Amended Complaint ("Complaint") are a broad range of ancient and unfounded accusations against Steven Lopez. In this Complaint, many of these allegations are repackaged in new and novel ways against the Steven Lopez as well as Defendants United States Olympic Committee ("USOC"), USA Taekwondo ("USAT"), and U.S. Center for SafeSport ("SafeSport").

Since the initial filing of the Complaint, and prior to Magistrate Judge Hegarty's recommendations, the plaintiffs agreed to dismiss 5 of the 11 counts against defendants Jean and Steven Lopez. Magistrate Judge Hegarty has further recommended dismissing the RICO claim as to all defendants. Because that RICO claim was the only remaining

claim against Jean Lopez, Magistrate Hegarty has recommended that Jean Lopez be dismissed as a Defendant in this case.

## **II. SUMMARY OF THE ORDER**

Magistrate Judge Hegarty issued his recommendations on the various Defendants' separate Motions to Dismiss, granting them in part and denying in part. The recommendations as they relate to the defendants Jean and Steven Lopez specifically can be summarized as follows:

a. Magistrate Judge Hegarty recommended denying Steven Lopez's Motion to Dismiss Count 3 [Forced Labor in Violation of 18 U.S.C. § 1589(a), § 1595(a)] by Gabriela Joslin, finding that Plaintiff Joslin's claims are both timely and plausibly alleged.

b. Magistrate Judge Hegarty recommended denying Steven Lopez's Motion to Dismiss Count 5 [Trafficking with Respect to Forced Labor in Violation of 18 U.S.C. § 1590(a), § 1595(a)] by Gabriela Joslin, finding that Plaintiff Joslin's claims are plausibly alleged.

c. Magistrate Judge Hegarty recommended denying Steven Lopez's Motion to Dismiss Count 8 [Forced Labor in Violation of 18 U.S.C. § 1589(a), § 1595(a), § 2255] by Amber Means, finding that Plaintiff Means' claims are plausibly alleged, and are timely under 18 U.S.C. § 1589(a)(2) for *conduct alleged after May 4, 2008* and under 18 U.S.C. § 2255 for *conduct alleged after February 14, 2008*.

d. Magistrate Judge Hegarty recommended granting Steven Lopez's Motion to Dismiss Count 10 [Trafficking with Respect to Forced Labor in Violation of 18 U.S.C. § 1590(a), § 1595(a), § 2255] by Amber Means for any claims alleged in 2003, finding

them barred, and denying the Motion for claims alleged after May 4, 2008 under TVPA and after February 14 2008 under § 2255, finding them timely.

e. Magistrate Judge Hegarty recommended denying Steven Lopez’s Motion to Dismiss Count 13 [Sexual Exploitation, Transportation, and Illegal Sexual Activity in Violation of 18 U.S.C. §§ 2242, 2243, 2421, 2422, 2423(a), 2423(b), 2423(c), and 2255] by Amber Means for claims alleged between February 14, 2008 and May 7, 2008, when she turned 18.

f. Magistrate Judge Hegarty recommended granting all Defendants’ Motion to Dismiss Count 15 [Violation of The Racketeer Influenced And Corrupt Organizations (“RICO”) Act, 18 U.S.C. § 1962], because Plaintiffs have no standing, and thus cannot plausibly allege their claim under 18 U.S.C. § 1962(c) and (d).

### **III. CLAIMS ALLEGED BEFORE THE STATUTE OF LIMITATIONS PERIOD WAS AMENDED SHOULD STILL BE TIME BARRED**

Plaintiffs’ Counts 3 and 5 assert claims for “Forced Labor” by Gaby Joslin against Steven Lopez under 18 U.S.C. § 1595(a), arising out of alleged violations of 18 U.S.C. §§ 1589(a). Specifically, Ms. Joslin, who reached the age of 18 on March 14, 2001, alleges that she “allow[ed] Steven Lopez to have sexual intercourse with her” from 2006 until 2010, beginning with an alleged sexual incident at the 2006 German Open in Bonn, Germany. Complaint at par. 610, 619-622, 624. Ms. Joslin’s claim that Steven Lopez violated 18 U.S.C. § 1589(a)(2) and (4) stems from these alleged “forced sexual services” beginning in April 2006 in Bonn, Germany. Complaint at par. 758.

18 U.S.C. § 1595 was first enacted on December 19, 2003; but at that time made no provision for a statute of limitations (meaning that the general four-year statute of

limitations under the TVPA was applicable). On December 23, 2008, 18 U.S.C. § 1589(c) was added, which provided that “No action may be maintained under this section unless it is commenced not later than 10 years after the cause of action arose.” On April 11, 2018, this section was amended to provide as follows: “No action may be maintained under subsection (a) unless it is commenced not later than the later of - (1) 10 years after the cause of action arose; or (2) 10 years after the victim reaches 18 years of age, if the victim was a minor at the time of the alleged offense.” Therefore, if the statute that existed until December 22, 2008 is applied, then all of Ms. Joslin’s claims are time-barred; it is only if the December 23, 2008 amendment adding 18 U.S.C. § 1589(c) is applied that any portion of these Counts could survive the defendant Steven Lopez’s Motion to Dismiss on the basis of the statute of limitations.

Plaintiffs’ Counts 8, 10 and 13 assert claims by Amber Means against defendant Steven Lopez under 18 U.S.C. § 2255 arising out of alleged violations of 18 U.S.C. §§ 1589, 1590, 1591, 2421, and 2423. Specifically, Ms. Means, who reached the age of 18 on July 5, 2018, alleges that, in June 2008 while she was in an open consensual sexual relationship with Steven Lopez, he raped her at a party at a friend’s condominium, while Ms. Means was drunk. Ms. Means claims to only know of this alleged rape because the owner of the condo told her it happened. Complaint at par. 685, 691-695. All of Ms. Means’ claims stem from the relationship that she had with Steven Lopez “while attending USOC an USAT sponsored events in 2008.” Complaint at par. 688.

From the time § 2255 was enacted in October 1986 until its March 7, 2013 amendment, the statute provided that “[a]ny action commenced under this section shall be barred unless the complaint is filed within *six years* after the right of action first

accrues or in the case of a person under a legal disability, not later than three years after the disability” (emphasis added). The statute of limitations was amended on March 7, 2013 to expand the six-year limit to ten years. Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, Sec. 1212, 127 STAT. 54, 143 (March 7, 2013). The statute was amended again on February 14, 2018, to its current language.

Defendant Steven Lopez has submitted that none of these amendments may be applied retroactively to claims that *arose prior to* the amendment, unless the language of the amended statute explicitly provides for retroactive application. *Landgraf v. USI Film Prods.*, 511 U.S. 244, 280 (1994). There is no indication in the legislative history of § 2255 of any intent to apply these amendments retroactively, and Plaintiffs have not established any basis for doing so. Applying the statute of limitations that existed at the time that each of these claims *arose* as against Steven Lopez would require the dismissal of the remaining counts 3, 5, 8, 10 and 13 against defendant Steven Lopez:

1) All of Gaby Joslin’s allegations (Counts 3 and 5) that arose prior to December 23, 2008 would be time barred [and Ms. Joslin makes no specific allegations that occurred after that date); and

2) All of Amber Means’ allegations (Counts 8, 10 and 13) that arose prior to August 24, 2008 would be time barred [and Ms. Means makes no specific allegations that occurred after that date).

In side-stepping the general rule against retroactivity, Magistrate Judge Hegarty relies on *Cruz v. Maypa*, 773 F.3d 138 (4th Cir. 2014), for the proposition that applying the new statute of limitations to “unexpired” claims did not amount to imposing an impermissible retroactive effect. Although the Court in *Cruz* also relied upon the

Supreme Court's framework in *Landgraf v. USI Film Products*, 511 U.S. 244 (1994), it carved out a narrow distinction to the rule against retroactivity for claims to which an "equitable tolling" basis existed, to distinguish the claims as "unexpired."

In *Cruz*, the court specifically applied the new statute of limitations to "unexpired" claims under the equitable tolling doctrine, stating as follows:

"Equitable tolling is appropriate in two circumstances: first, when the plaintiffs were prevented from asserting their claims by some kind of wrongful conduct on the part of the defendant, and second, when extraordinary circumstances beyond plaintiffs' control made it impossible to file the claims on time. Equitable tolling is a rare remedy available only where the plaintiff has exercise[d] due diligence in preserving [her] legal rights.'" See *Cruz, supra*, 773 F.3d at 145 [citations omitted]

The Court in *Cruz* went on to find that the "unexpired" claims were equitably tolled on the following facts:

"Cruz has alleged that the defendants confiscated her passport, isolated her from other people, monitored her communications, and threatened that she would be imprisoned and deported if she tried to escape. Taking these facts in the light most favorable to Cruz, this virtual imprisonment prevented her from seeking legal redress until at least the date of her escape in January 2008." *Id.* at p. 146.

Here, Plaintiffs are not entitled to the remedy of equitable tolling of the applicable limitations periods, and their TVPA claims are subject to the presumption against retroactivity as illustrated by the Supreme Court in *Landgraf* absent clear congressional intent favoring such a result. *Landgraf* at 280. Simply stated, the facts that existed in *Cruz* to justify equitable tolling do not exist in the present case. Plaintiffs were not at any point prevented from asserting their claims by some sort of wrongful conduct by defendant Steven Lopez. Furthermore, defendant Steven Lopez did not obstruct the Plaintiffs in any way, such as isolation or threats against the Plaintiffs for seeking remedy with any organization, be it USAT, USOC or law enforcement. Nor were

there extraordinary circumstances beyond Plaintiffs' control that made it impossible to file a claim before the statute of limitations expired. In fact, some of the plaintiffs filed administrative claims related to the same conduct many years prior to filing this lawsuit.

Gabriela Joslin alleges an ongoing sexual relationship with Steven Lopez for four years, from 2006 until 2010, during which time Ms. Joslin could have reported any alleged misconduct at any time. Amber Means alleges that she was in an open consensual relationship with Steven Lopez in June 2008 when he allegedly raped her. Ms. Means turned 18 on May 7, 2008, one month prior to the alleged incident. As such, § 2255 is not applicable. It is also improper for Ms. Means to assert § 2255 as the alternative civil remedy for claims 8 and 10. Those claims seek violations of 18 U.S.C. 1589 and 1590 respectively. But at the time of the alleged violations, § 2255 was not a civil remedy for those violations (it was expanded on March 7, 2013 to include those violations). The last allegation of interaction between Ms. Means and Steven Lopez was February 2013 (see Second Amended Complaint, para. 707). This is an even clearer instance of improper retroactive application under *Landgraf*, because it involves the creation of additional liability for Steven Lopez.

Because there is no basis to apply equitable tolling in this case, the Court should not apply the new statute of limitations retroactively, and should not apply the new statute of limitations to claims that were "unexpired" at the time that the statute of limitations was amended.

Defendant Steven Lopez respectfully submits that Magistrate Judge Hegarty's refusal to "follow" *Abarca v. Little*, 54 F. Supp. 3d 1064 (D. Minn. 2014), was based on an incorrect distinction drawn between *Abarca* and *Cruz*. Specifically, it is submitted



that Magistrate Judge Hegarty erred in finding that *Cruz* stands for the proposition that the new statute of limitations must be applied to every instance of “unexpired claims,” as opposed to applying it only to unexpired claims where there is a factual basis to apply the doctrine of equitable tolling. If *Cruz* is applied only to those cases where equitable tolling is appropriate, then it is entirely consistent with *Abarca*, where the Court found that there was no factual basis for equitable tolling:

“Campis argues that tolling is warranted because fear of retaliation prevented him from timely pursuing his civil remedies. The allegations, however, do not support a finding that Campis was physically or psychologically prevented from filing suit earlier. Each year, Campis traveled back and forth between Mexico and the United States. During his extended absences from defendants, Campis had the physical freedom to seek legal advice and assistance. Indeed, Campis met officials at the U.S. Consulate during the relevant period, but chose not to share his circumstances. The allegations also support a finding that Campis was psychologically capable of advocating for himself and others, even in defendants' presence. During his employment with defendants, Campis confronted Little on more than one occasion to ask for better working and living conditions. Campis even remained in defendants' housing for several months despite Little's demands that he leave. Furthermore, Campis's fear did not prevent him from reporting defendants to the DOL in 2008 or from working with the U.S. government to secure a visa. These acts evince a sophistication and courage that undermine Campis's argument that extraordinary circumstances rendered him incapable of filing suit until six years after he severed his relationship with defendants.” *Abarca, supra*, 54 F.Supp.3d at 1070.

Furthermore, by allowing the TVPA and § 2255 amended statutes of limitations to apply to the Plaintiffs' claims retroactively, the court is, in effect, taking away a valid affirmative defense of the defendant Steven Lopez. In *Hughes Aircraft Co. v. U.S. ex rel. Schumer*, 520 U.S. 939 (1997), the Supreme Court held that the legal effect of an amendment to the False Claims Act would deprive the defendant of a full defense to a *qui tam* action that existed before the Act was amended, and as such, the Act was entitled to the presumption of retroactivity under *Landgraf*.

For all of the foregoing reasons, it is respectfully submitted that Counts 3, 5, 8, 10 and 13 are time-barred as to defendant Steven Lopez.

#### **IV. PLAINTIFFS' TVPA CLAIMS ARE NOT SUFFICIENTLY PLED**

In the event that Counts 3, 5, 8, 10 and 13 are not found to be time-barred as to defendant Steven Lopez, they still must be adequately pled. Despite the fact that this is the Plaintiffs' third pleading attempt, these Counts remain long on conclusory allegations, and utterly devoid of the requisite factual specificity.

It is well-established that to survive a motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). However, of equal importance is the notion that "threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal* at 678.

The Second Amended Complaint consists of nothing but mere conclusory statements and unsubstantiated allegations by Plaintiffs, such as "[i]f these athletes wanted to...fulfill their childhood dreams to compete as Olympians...they had no choice but to submit to the Lopez brothers' sexual demands." Plaintiffs also reference paragraphs in the Second Amended Complaint alleging in a conclusory and vague manner that "it was widely known that Plaintiffs were highly vulnerable and subject to the commands and control of Defendants." However, conspicuously absent are any allegations that Steven Lopez knowingly obtained services of Plaintiffs for forced labor and trafficking. Furthermore, any allegations related to *Jean Lopez* (or any of the other defendants) cannot assist Plaintiffs in meeting the specificity requirement as to *Steven Lopez*.

Regarding Ms. Joslin's claims against Steven Lopez (Counts 3 and 5), the Second Amended Complaint's allegations are wholly conclusory and/or involve alleged conduct by defendants other than Steven Lopez:

1) At par. 620 of the Second Amended Complaint, it is alleged that "It was clear to Gaby that Steven required sex before he would address his responsibilities as her coach." There is no explanation whatsoever as to how or why this was "clear" to Ms. Joslin.

2) At par. 622 of the Second Amended Complaint, it is alleged that "Gaby then continued to allow Steven to have sexual intercourse with her for the remainder of her career in taekwondo, out of fear of the Lopez brothers and *in particular, to Jean, who made it clear to her* that she was to "cater to Steven." (emphasis added). This particular allegation actually undermines Ms. Joslin's claims against defendant Steven Lopez, as they make it clear that Ms. Joslin actually alleges that it was *Jean Lopez* (if anyone) whom she feared or who allegedly forced her to have sex with Steven Lopez. Simply stated, this allegation does not support Ms. Joslin's claims against defendant Steven Lopez.

3) At paragraphs 627-632, Ms. Joslin makes numerous allegations against Jean Lopez, none of which support her claims against defendant Steven Lopez.

4) The remainder of Ms. Joslin's allegations are directed at defendants USAT, USOC and the U.S. Center for SafeSport; and do not support Ms. Joslin's claims against defendant Steven Lopez.

Regarding Ms. Means' claims against Steven Lopez (Counts 8, 10 and 13), the Second Amended Complaint's allegations are also wholly conclusory and/or involve alleged conduct by defendants other than Steven Lopez:

1) At par. 708 of the Second Amended Complaint, Ms. Means alleges that she "felt that if she angered the Lopez brothers, she would face retaliation, and that it was pay-to-play and she had to service the Lopez brothers with her body in order to compete in USA Taekwondo and reach the Olympics." However, this comes after a series of allegations that involve both Jean and Steven Lopez; and other athletes as well. It is entirely unclear who she believed she would receive retaliation from, and for whom she believed that she needed to "service the Lopez brothers with her body in order to compete in USA Taekwondo and reach the Olympics"; if she believed that this "pay-to-play" came from defendants USAT and/or USOC, as is alleged throughout the Second Amended Complaint, then this certainly does not support her claims against Steven Lopez.

2) At par. 709 of the Second Amended Complaint, Ms. Means alleges that when she "rebuffed the sexual advances of Steven Lopez, she did face retaliation and ultimately her fighting career ended *as a result of Jean's control* over the placement of athletes on competitive teams." (emphasis added) This particular allegation actually undermines Ms. Means' claims against defendant Steven Lopez, as it makes it clear that Ms. Means actually alleges that it was *Jean Lopez* (if anyone) who allegedly retaliated against her. Simply stated, this allegation does not support Ms. Joslin's claims against defendant Steven Lopez.

3) The remainder of Ms. Joslin's allegations are directed at defendants USAT, USOC and the U.S. Center for SafeSport; and do not support Ms. Joslin's claims against defendant Steven Lopez.

### **III. CONCLUSION**

For all the above reasons, Defendant Steven Lopez respectfully objects to Magistrate Judge Hegarty's recommendations denying in part his Motion to Dismiss Counts 3, 5, 8, 10 and 13.

Respectfully submitted this 20<sup>th</sup> Day of March, 2019.

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**CERTIFICATE OF SERVICE**

Pursuant to Federal Rule of Civil Procedure 5 and the Court's Local Rules, the undersigned hereby certifies that on this day, March 20, 2019, a copy of the foregoing document entitled ***DEFENDANTS STEVEN LOPEZ AND JEAN LOPEZ'S MEMORANDUM OF LAW IN SUPPORT OF OBJECTIONS TO MAGISTRATE JUDGE'S REPORT*** was filed and served through the Court's electronic filing system (CM/ECF) upon all registered parties and their counsel.

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